

## CHAPTER 220

### SURFACE WATER MANAGEMENT AREA REGULATION

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#### PART I General

##### 9 VAC 25-220-10 -- Definitions

Unless a different meaning is required by the context, the following terms, as used in this chapter, shall have the following meanings:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board.

"Existing beneficial consumptive user" means a person who is currently withdrawing water from a stream for a beneficial use and not returning that water to the stream near the point from which it was taken.

"Investor-owned water company" means a water supplier owned by private investors which operates independently of the local government and is regulated by the Department of Health.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Serious harm" means man induced reduction to the flow of a surface water resource that results in impairment of one or more beneficial uses.

"Surface Water Withdrawal Certificate" means a document issued by the board as found in subsection D of §62.1-243 of the Code of Virginia.

"Surface water withdrawal permit" means a document issued by the board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the board deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except groundwater as defined in §62.1-44.85 of the Code of Virginia.

"Water conservation program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection B of §62.1-243 of the Code of Virginia.

"Water management program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection C of §62.1-243 of the Code of Virginia.

9VAC25-220-20. Purpose.

This chapter delineates the procedures and requirements to be followed in connection with establishment of surface water management areas, the issuance of surface water withdrawal permits and the issuance of surface water withdrawal certificates by the board pursuant to the Code of Virginia. The establishment of surface water management areas, the issuance of surface water withdrawal permits and surface water withdrawal certificates provide for the protection of beneficial uses during periods of low stream flow.

9VAC25-220-30. Authority for chapter.

The authority for this chapter is found in Chapter 24 (§62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

9VAC25-220-40. Initiate surface water management area proceeding.

A. The board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the surface water management area in question, or any state agency, may initiate a surface water management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties;
2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and
3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow conditions to the detriment of instream values.

B. If the board finds that the conditions required in subsection A of 9VAC25-220-40 exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the board shall, by regulation, declare the area in question to be a surface water management area.

C. In its proceeding to declare an area to be a surface water management area, the board shall, by regulation, determine when the level of flow is such that permit conditions in a surface water management area are in force. This flow level will be determined for each regulation establishing a surface water management area and included in it.

D. The board shall include in its decision a definition of the boundaries of the surface water management area.

E. The regulations may provide that the board, or the board executive director may by order, declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

F. The board shall follow its Public Participation Guidelines (9VAC25-10-10 et seq.) for all hearings contemplated under this section. If after a public hearing held pursuant to §9-6.14:7.1 of the Virginia Administrative Process Act, or at the request of an affected person or on the board motion, a hearing shall be held under §9-6.14:8 of the Virginia Administrative Process Act.

#### 9VAC25-220-50. Notice of surface water management area.

A. The board shall cause notice of the declaration of a surface water management area to be published in a newspaper of general circulation throughout the area covered by the declaration.

B. The board shall mail a copy of its decision on the proposed declaration of a surface water management area to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies, or which is known by the board to make offstream use of water from the area, and to the chief administrative officer of any federal facility known by the board to be using water from within the area.

#### 9VAC25-220-60. Agreements.

A. The board shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area.

B. When the board finds that any such agreement, executed in writing and filed with the board, is consistent with the intent, purposes and requirements of this chapter, the board shall approve the agreement following a public hearing.

C. The board shall provide at least 60 days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The board shall be a party to the agreement.

D. The agreement, until terminated, shall control in lieu of a formal order, rule, regulation or permit issued by the board under the provisions of this chapter, and shall be deemed to be a case decision under the Administrative Process Act (§9-6.14:1 et seq. of the Code of Virginia). Permits issued in accordance with this chapter shall incorporate the terms of this agreement.

E. Any agreement shall specify the amount of water affected by it.

F. Any agreement approved by the board may include conditions which can result in its amendment or termination by the board, following a public hearing if the board finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions include the following:

1. A determination by the board that the agreement originally approved by the board will not further the purposes of this chapter;
2. A determination by the board that circumstances have changed such that the agreement originally approved by the board will no longer further the purposes of this chapter; or
3. One or more parties to the agreement is not fulfilling its commitments under the agreement.

The board shall provide at least 60 days' notice of the public hearing to the public and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

#### *Historical Notes*

*Derived from VR680-15-03 §1.6; eff. June 3, 1992.*

*Amended, Virginia Register Volume 16, Issue 15, eff. May 10, 2000.*

### *Effect of Amendment*

*The May 10, 2000 amendment substantially revised this section to require a public hearing for approval of a new or amended agreement among water users in a surface water management area following 60 days' notice instead of a regulatory process under the Administrative Process Act.*

## Part II Permit Requirements, Application And Issuance

### 9VAC25-220-70. Application for a permit.

A. Duty to apply. Any person who withdraws surface water or proposes to withdraw surface water in a surface water management area must have a surface water withdrawal permit, except persons excluded under subsection B of this section or exempted under subsection C of this section, or withdrawals made pursuant to a voluntary agreement approved by the board pursuant to 9VAC25-220-60. A complete application shall be submitted to the board in accordance with this section.

B. Exclusions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law:

1. Any nonconsumptive use;
2. Any water withdrawal of less than 300,000 gallons in any single month;
3. Any withdrawal in any area which has not been declared a surface water management area; and
4. Any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines, Minerals and Energy.

C. Exemptions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law. However, the following do require a surface water withdrawal certificate containing details of a board approved water conservation or management plan as found in subdivision 2 of 9VAC25-220-100 and Part V (9VAC25-220-250 et seq.) of this chapter. It is not the intent or purpose of this certification program to affect the withdrawal of water approved by the board.

1. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

- a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a §401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

c. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a water management area are in force pursuant to subsection G of 9VAC25-220-80 and 9VAC25-220-190, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the board may require release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment. Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by this subdivision only at the option of that political subdivision or investor-owned water company.

2. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989; and

b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a §401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawals; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

a. Result in a significantly new or substantially increased water withdrawal; or

b. Violate or lead to the violation of the terms and conditions of the permit.

E. Complete application required.

1. Any person proposing to withdraw water shall submit a complete application and secure a permit prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.
2. Any person reapplying to withdraw water shall submit a complete application.
3. A complete surface water withdrawal permit application to the State Water Control Board shall, as a minimum, consist of the following:
  - a. The location of the water withdrawal, including the name of the waterbody from which the withdrawal is being made;
  - b. The average daily withdrawal, the maximum proposed withdrawal, and any variations of the withdrawal by season including amounts and times of the day or year during which withdrawals may occur;
  - c. The use for the withdrawal, including the importance of the need for this use;
  - d. Any alternative water supplies or water storage; and
  - e. If it is determined that special studies are needed to develop a proper instream flow requirement, then additional information may be necessary.
4. Where an application is considered incomplete the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.
5. Any person proposing to withdraw water shall submit an application for a permit 180 days prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.
6. Any person with an existing unpermitted water withdrawal operation shall submit an application immediately upon discovery by the owner or within 30 days upon being requested to by the board whichever comes first.

F. Informational requirements. All applicants for a surface water withdrawal permit shall provide all such information consistent with this chapter as the board deems necessary. All applicants for a permit must submit a complete permit application in accordance with subsection A of this section.

### *Historical Notes*

*Derived from VR680-15-03 §2.1; eff. June 3, 1992.*

*Amended, Virginia Register Volume 16, Issue 15, eff. May 10, 2000.*

### *Effect of Amendment*

*The May 10, 2000 amendment provides for voluntary agreements among water users in a surface water management area to control use of surface waters during periods of low stream flow in lieu of a permit when the State Water Control Board finds that the agreement complies with the law.*

9VAC25-220-80. Conditions applicable to all permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the surface water withdrawal permit holder of the duty to comply with all applicable federal and state statutes, regulations, standards and prohibitions. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit suspension, cancellation, revocation, modification or denial of a permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to (i) avoid all adverse environmental impact which could result from the activity, (ii) where avoidance is impractical, minimize the adverse environmental impact, and (iii) where impacts cannot be avoided, provide mitigation of the adverse impact on an in-kind basis.

C. Permit action.

1. A permit may be modified, revoked, suspended, cancelled, reissued, or terminated as set forth in this chapter.

2. If a permittee files a request for permit modification, suspension or cancellation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective permit.

3. Permits may be modified, revoked and reissued or terminated upon the request of the permittee, or upon board initiative to reflect the requirements of any changes in the statutes or regulations.

D. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;

2. Inspect any facilities, operations or practices including monitoring and control equipment regulated or required under the permit.

E. Duty to provide information. The permittee shall furnish to the board, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, reissuing, suspending and cancelling the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee. This information shall be furnished to the board pursuant to §62.1-244 of the Code of Virginia.

F. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved methods as specified in the permit or as approved by the board;

2. Measurements taken for the purpose of monitoring shall be representative of the monitored activity;

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

a. The date, exact place and time of measurements;

b. The name of the individuals who performed the measurements;

c. The date the measurements were compiled;

d. The name of the individuals who compiled the measurements;

e. The techniques or methods supporting the information such as observations, readings, calculations and bench data used; and

f. The results of such techniques or methods.

G. Permit conditions become applicable.

1. Permit conditions become applicable in a surface water management area upon notice by the board to each permittee by mail or cause notice of that to be published in a newspaper of general circulation throughout the area.

2. The board shall notify each permittee by mail or cause notice of that to be published in a newspaper of general circulation throughout the surface water management area when the declaration of water shortage is rescinded.

9VAC25-220-90. Signatory requirements.

Any application, report, or certification shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 in second-quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision a, b or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete."

9VAC25-220-100. Establishing applicable limitations or other permit conditions.

In addition to the conditions established in 9VAC25-220-80, each permit shall include conditions meeting the following requirements where applicable:

1. Instream flow conditions.

a. Subject to the provisions of §62.1-242 et seq. of the Code of Virginia and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in §62.1-80 et seq. of the Code of Virginia instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

b. This flow requirement shall be appropriate for the protection of beneficial uses.

c. In determining the level of flow in need of protection of beneficial uses, the board shall consider, among other things, recreation and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigating measures, and the socioeconomic impacts of such restriction on the potentially affected water users and on the citizens of the Commonwealth in general.

2. Water conservation or management plans.

a. Subject to the provisions of §62.1-242 et seq. of the Code of Virginia permit conditions may include voluntary and mandatory conservation measures.

b. Political subdivisions and investor-owned water companies shall have water conservation plans which shall include, but not be limited to, the following:

(1) Use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code, Chapter 6 (§36-97 et seq.) of Title 36 of the Code of Virginia;

(2) A water loss reduction program;

(3) A water use education program; and

(4) Ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties during water shortage emergencies.

c. Beneficial consumptive users shall have water management plans which shall include, but not be limited to, the following:

(1) Use of water saving plumbing;

(2) A water loss reduction program;

(3) A water use education program; and

(4) Mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection C of 9VAC25-220-70.

3. Compliance requirements. The permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

4. Duration of permits. Surface water withdrawal permits issued under this chapter shall have an effective duration of not more than 10 years. The term of these permits shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and reissuance of a new permit.

5. Monitoring requirements as conditions of permits.

a. All permits shall specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit; and

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the

monitored activity and including, when appropriate, continuous monitoring.

b. All permits shall include requirements to report monitoring results with a frequency dependent on the nature and effect of the water withdrawal, but in no case less than once per year.

6. Reissued permits. When a permit is renewed or reissued, limitations or conditions must be in conformance with current limitations or conditions.

9VAC25-220-110. Draft permit formulation.

A. Upon receipt of a complete application, pursuant to subsection A of 9VAC25-220-70, the board shall review the application and make a tentative determination to issue the permit or deny the application. In considering whether to issue or deny a permit under this section, the board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their representative withdrawal uses;
2. The nature and size of the stream;
3. The type of businesses or activities to which the various uses are related;
4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream uses;
5. The effects on beneficial uses; and
6. Any other relevant factors.

B. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. The level of flow that activates the permit conditions, water withdrawal limitations, and other requirements applicable to the permit;
2. Monitoring requirements;
3. Instream flow requirements; and
4. Water conservation or management requirements.

C. If the tentative decision is to deny the application, the board shall do so in accordance with 9VAC25-220-240.

9VAC25-220-120. Permit issuance.

A. Upon completion of all public involvement and consideration of all comments, the executive director may grant the permit, or, at his discretion, transmit the application, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.

B. Permits issued by priority system.

1. For the purposes of this chapter, the following water-use classification system based on beneficial uses, instream and offstream, shall be used by the board when issuing permits:

a. Class I uses are domestic (including public water supply). Class I uses are all existing uses as of July 1, 1989. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to §404 of the Clean Water Act;

b. Class II uses are new uses, not existing on July 1, 1989. These uses include both instream uses, protection of fish and wildlife habitat, maintenance of waste assimilation and offstream uses, agriculture, electric power generation, commercial and industrial; and

c. Class III uses are new uses not existing on July 1, 1989. They include, but are not limited to, recreation, navigation, and cultural and aesthetic values.

2. Class I uses shall be given the highest priority in the issuance of permits for other beneficial uses. Class II and Class III uses are of decreasing priority respectively.

3. The board may impose restrictions on one or more classes of beneficial uses as may be necessary to protect the surface water resources of the area from serious harm.

4. In its permit decision, the board shall attempt to balance offstream and instream uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-user group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

9VAC25-220-130. Effect of a permit.

A. Compliance with a surface water withdrawal permit constitutes compliance with the surface water withdrawal permit requirements of §§62.1-242 through 62.1-253 of the Code of Virginia.

B. Nothing contained in this chapter shall be construed as an expressed or implied waiver of other permit requirements, state or federal, including the Virginia water protection permit and Water Withdrawal Reporting (9VAC25-200-10 et seq.) of the Regulations of the State Water Control Board.

C. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

D. Nothing in this chapter shall be construed as altering, or authorizing any alteration of, any existing riparian rights except as set forth in permits issued pursuant to this chapter. The conditions in such permits shall be in force only in those times when low stream flow, or the potential therefor, result in a declaration as provided for in subsection C of 9VAC25-220-40.

9VAC25-220-140. Variances and alternative measures.

A. Variances may be applied for, and alternative measures may be used to:

1. Prevent undue hardship; and
2. Ensure equitable distribution of water resources.

B. Alternative measures may include, but are not limited to, the following:

1. Alternative or secondary water source;
2. Water storage during times of minimum use and high stream flow;
3. Ponds, pits, ditches and basins when the sole source of water is storm water run-off; and
4. Vary water withdrawal based on time of day, the season or the stream flow.

C. The board must approve all variances and use of alternative measures.

### Part III Public Involvement In Permit Process

9VAC25-220-150. Public notice of permit action and public comment period.

A. Every draft permit shall be given public notice paid for by the owner, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a permit, or proposed permit action shall include:

1. Name and address of the applicant. If the location of the activity resulting in the withdrawal of water differs from the address of the applicant the notice shall also state the location of the withdrawal in sufficient detail such that the specific location may be easily identified;
2. Brief description of the business or activity to be conducted at the withdrawal site;
3. The name of the affected waterway;
4. A statement of the tentative determination to issue or deny a permit;
5. A brief description of the final determination procedure;
6. The address and phone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public hearing.

9VAC25-220-160. Public access to information.

All information pertaining to permit processing or in reference to any source of water withdrawal shall be available to the public.

9VAC25-220-170. Public comments and hearing.

A. The board shall provide a comment period of at least 30 days following the date of public notice of the formulation of a draft permit during which interested persons may submit written comments and requests for an informal hearing on the proposed permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision process.

B. The executive director shall consider all written comments and requests for an informal hearing received during the comment period, and shall make a determination on the necessity of an informal hearing in accordance with 9VAC25-230-50. All proceedings, informal hearings and decisions therefrom will be in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.).

C. Should the executive director, in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.), determine to dispense with the informal hearing, he may grant the permit,

or, at his discretion, transmit the proposal, application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.

9VAC25-220-180. Public notice of hearing.

A. Public notice of any informal hearing held pursuant to 9VAC25-220-170 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; and
2. Notice of the informal hearing shall be sent to all persons and government agencies which received a copy of the notice of proposed regulation or permit application and to those persons requesting an informal hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 above at least 30 days in advance of the informal hearing.

C. The content of the public notice of any hearing held pursuant to 9VAC25-220-170 shall include at least the following:

1. Name and address of each person whose application will be considered at the informal hearing and a brief description of the person's activities or operations;
2. The precise location of such activity and the state surface waters that will or may be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;
3. A brief reference to the public notice issued for the permit application, including identification number and date of issuance of the permit application unless the public notice includes the informal hearing notice;
4. Information regarding the time and location for the informal hearing;
5. The purpose of the informal hearing;
6. A concise statement of the relevant water withdrawal issues raised by the persons requesting the informal hearing;
7. Contact person and the address of the State Water Control Board office at which the interested persons may obtain further information, request a copy of the draft permit prepared pursuant to 9VAC25-220-110; and
8. A brief reference to the rules and procedures to be followed at the informal hearing.

9VAC25-220-190. Public notice that permit conditions are in force.

A. When permit conditions become applicable in a surface water management area, the board shall notify each permittee by mail or cause notice of it to be published in a newspaper of general circulation throughout the area.

B. The board shall notify each permittee by mail or cause notice of it to be published in a newspaper of general circulation throughout the surface water management area when the declaration of water shortage is rescinded.

#### Part IV

#### Permit Modification, Revocation And Reissuance, Suspension, Cancellation And Denial

9VAC25-220-200. Rules for modification, revocation and reissuance, suspension, cancellation and denial.

Permits shall be modified, revoked and reissued, suspended, or cancelled only as authorized by this section as follows:

1. A permit may be modified in whole or in part, revoked and reissued, suspended, or cancelled.
2. Permit modifications shall not be used to extend the term of a permit.
3. Modification, revocation and reissuance, suspension, or cancellation may be initiated by the board, permittee, or other person, under applicable laws or the provisions of this chapter.
4. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100, a permit can be suspended or cancelled whenever the board finds that the holder of a permit is willfully violating any provision of such permit or any other provision of §62.1-242 et seq. of the Code of Virginia. Whenever a permit is suspended the conditions to lift the suspension will be included in the board's decision. The determination to suspend, cancel or impose conditions on its future use in order to prevent future violations shall be based on the seriousness of the offense, the permittee's past record, the effect on beneficial uses, the effect on other users in the area and any other relevant factors. The causes for suspension or cancellation are as follows:
  - a. Willful noncompliance by the permittee with any condition of the permit;
  - b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

- c. The permittee's violation of a special or judicial order; and
- d. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or cancellation.

5. In considering whether to modify, revoke and reissue, or deny a permit under this section, the board shall consider:

- a. The number of persons using a stream and the object, extent and necessity of their representative withdrawal uses;
- b. The nature and size of the stream;
- c. The type of businesses or activities to which the various uses are related;
- d. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream uses;
- e. The effects on beneficial uses; and
- f. Any other relevant factors.

#### 9VAC25-220-210. Causes for modification.

A permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it;
2. When new information becomes available about the operation or withdrawal covered by the permit which was not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance;
3. When a change is made in the methodology or regulations on which the permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water is detrimental to the instream beneficial use and that the withdrawal of water should be subject to further net limitations; and

6. When other states were not notified of the change in the permit and their waters may be affected by the withdrawal.

9VAC25-220-220. Transferability of permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Automatic transfer. Any permit shall be automatically transferred to a new user if:

1. The current user notifies the board 30 days in advance of the proposed transfer of the permit to the facility or property;

2. The notice to the board includes a written agreement between the existing and proposed new user containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing user and the proposed user of its intent to modify or revoke and reissue the permit.

9VAC25-220-230. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the permit without following the public involvement procedures.

B. For surface water withdrawal permits, minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a greater frequency than required in the permit; and

3. Allow for a change in ownership or operational control when the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board.

9VAC25-220-240. Denial of a permit.

- A. The applicant shall be notified by letter of the staff's decision to recommend to the board denial of the permit requested.
- B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may at his option: (i) modify the application in order to achieve a favorable recommendation; (ii) withdraw his application; or (iii) proceed with the processing on the original application.
- C. Should the applicant withdraw his application, no permit will be issued.
- D. Should the applicant elect to proceed with the original project, the staff shall make its recommendation of denial to the executive director for determination of the need for public notice as provided for in accordance with Part III of this chapter (9VAC25-220-150 et seq.).

## Part V

### Issuance of Certificates

#### 9VAC25-220-250. Duty to apply.

- A. No political subdivision, investor-owned water company or existing beneficial consumptive user withdrawing water in a declared surface water management area and exempted under subsection C of 9VAC25-220-70 from needing a surface water withdrawal permit shall continue to withdraw water in the surface water management area except as authorized by a surface water withdrawal certificate.
- B. If an area has been declared a surface water management area, any person exempted under subsection C of 9VAC25-220-70 shall apply for a certificate within 90 days of the declaration.

#### VAC25-220-260. Duration of certificates.

Surface water withdrawal certificates shall have an effective duration of not more than 10 years.

#### 9VAC25-220-270. Duty to re-apply.

Any person who has an effective surface water withdrawal certificate must apply for a new certification at least 180 days before the expiration date of an effective certificate unless permission for a later date has been granted by the board.

#### 9VAC25-220-280. Complete application required.

- A. A complete Surface Water Withdrawal Certificate application to the State Water Control Board shall, as a minimum, consist of the following:

1. General requirements.

- a. The location of the water withdrawal, including the name of the waterbody from which the withdrawal is being made;
- b. The average daily withdrawal, the maximum withdrawal, and any variations of the withdrawal by season including amounts and times of the day or year during which withdrawals may occur;
- c. The use of the withdrawal, including the importance for the need for this use; and
- d. Any alternative water supplies or water storage.

2. Specific requirements. Water conservation or management plans as found in subdivision 2 of 9VAC25-220-100.

B. Where an application is considered incomplete the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a certificate application, or submitted incorrect information in a certificate application or in any report to the board, he shall immediately submit such facts or the correct information.

9VAC25-220-290. Information requirements.

All applicants for a Surface Water Withdrawal Certificate shall provide all such information consistent with this chapter as the board deems necessary. All applicants for a certificate must submit a complete application in accordance with 9VAC25-220-280.

9VAC25-220-300. Additional requirements.

In addition to the requirements found in this section, the requirements in subsections A and G of 9VAC25-220-80, 9VAC25-220-90, subdivisions B 1 and 4 of 9VAC25-220-110, subsection A of 9VAC25-220-120, 9VAC25-220-130, Part III and Part IV of this chapter (9VAC25-220-150 et seq. and 9VAC25-220-200 et seq.) also apply to certificate holders and certificate applicants as necessary.

Part VI  
Enforcement

9VAC25-220-310. Enforcement.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the law.

Part VII  
Miscellaneous

9VAC25-220-320. Delegation of authority.

The executive director, or a designee acting for him, may perform any act of the board provided under this chapter.

9VAC25-220-330. Transition.

A. No surface water management area shall be designated by regulation sooner than six months following final adoption of this chapter.

B. If a surface water user holds more than one permit for water withdrawal, in any areas of conflict or disagreement among the permits, the surface water withdrawal permit shall hold priority.